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In the Supreme Court of the United States

October Term, 1962

[redacted] DAVISON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 904

FRANKLIN McKENZIE DAVISON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This is a companion case to *William J. Hardy* v. *United States*, No. 905, this Term, and involves a situation identical in all material respects with the *Hardy* case. In 1943, taxpayer filed a timely return for the calendar year 1942, revealing a federal income tax liability in the amount of $39,267.11. That amount was assessed in March or April, 1943. Only 50% of the assessment was paid, while the remaining 50%, or $19,633.56, was supposedly discharged pursuant to the forgiveness provision in Sec-

tion 6(a) of the Current Tax Payment Act of 1943 c. 120, 57 Stat. 126, 26 U.S.C. 1946 ed., Sec. 1622, note, which became effective as of September 1, 1943. Subsequently it was discovered that taxpayer committed fraud in his 1942 return, as a result of which additions to the tax for that year were included in a jeopardy assessment made for the years 1942 to 1947 on November 21, 1951. By the express terms of Section 6(a), taxpayer's fraud rendered the forgiveness feature of the Act inapplicable; the unpaid portion of his 1942 taxes had therefore been improperly discharged. On May 2, 1952, the Commissioner reassessed this unpaid portion of the 1942 taxes plus interest thereon of $10,777.75. In December 1953, taxpayer paid that part of the assessment which represented the unpaid 1942 tax, but he has never paid the assessed interest. The present action was brought on May 1, 1958, to collect amounts due including that part of the 1942 tax thought to be owing, plus interest. It was subsequently discovered that all of the 1942 tax had been paid, and the government's complaint was amended to include only the claim for interest for 1942 which had not been paid. (Pet. 2a-3a.)

Since the controlling principles in the present case are the same as those in the *Hardy* case, the argument in the government's brief in opposition in *Hardy* is adopted here by reference. As in the *Hardy* case, the court of appeals agreed with the district court that the amount claimed by the government to be owing had never been paid by the taxpayer and that the assessment made on May 2, 1952, was

not barred by the statute of limitations or otherwise prevented because of a previous jeopardy assessment made on November 21, 1951 (Pet. App. 4a-6a). Taxpayer's argument here is identical with the taxpayer's argument in *Hardy*. The government contends, and the court of appeals has so held, that (1) there was no binding agreement between taxpayer and the government as to his 1942 tax liability merely because he paid an assessed deficiency for that year since the statutory requisites for a closing agreement or compromise (Sections 3760 and 3761 of the Internal Revenue Code of 1939) were not fulfilled, and (2) Congress intended that where there was fraud in reporting 1942 tax liability the portion of the tax dischcarged pursuant to the Current Tax Payment Act could be reassessed and collected at any time, *i.e.*, it was to be treated pursuant to the provisions of Section 276(a) of the 1939 Code in the same manner as a fraud deficiency for purposes of the statute of limitations. Accordingly, the government is not barred from collecting the interest involved here either by virtue of the statute of limitations or because of taxpayer's payment of his 1942 taxes.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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